

PLR 9644034, 1996 WL 632166 (IRS PLR)

Internal Revenue Service (I.R.S.)

Private Letter Ruling

Issue: November 1, 1996  
July 30, 1996

Section 7701 -- Definitions  
7701.00-00 Definitions  
7701.20-00 Indian Tribal Government

Section 7871 -- Indian Tribal Governments Treated As States For Certain Purposes  
7871.00-00 Indian Tribal Governments Treated As States For Certain Purposes

CC: DOM:FI&P: 1 / PLR-39499-96

Legend:

Tribe =  
Act A =  
Act B =  
Act C =

Dear \*\*\*

This ruling responds to your letter dated January 30, 1996, add subsequent correspondence, requesting a ruling that Tribe is an Indian tribal government within the meaning of [sections 7701\(a\)\(40\)](#) and [7871\(a\) of the Internal Revenue Code](#).

#### FACTS

Tribe is officially recognized by the Department of the Interior as an Indian tribe with a government-to-government relationship with the United States by virtue of being included on the list of tribal entities published by the Secretary of the Interior in the Federal Register. See [60 Fed.Reg. 9250, 9251 \(1995\)](#).

Tribe is not included in the list of Indian tribal governments provided in [Rev. Proc. 83-87, 1983-2 C.B. 606](#). This is a list of Indian tribal governments that are to be treated as states for certain federal tax purposes, pursuant to [sections 7701\(a\)\(40\)](#) and [7871\(a\)](#) of the Code.

Tribe is organized under a constitution adopted pursuant to Act B, as amended by Act C, and approved pursuant to the authority granted to the Secretary of the Interior by Act A. Tribe asserts a variety of sovereign powers, including the power to tax and police powers. Tribe adopted a law and order code and established a tribal court. It maintains a security force and deputizes police officers when needed. Tribe has exercised the taxing power authorized by its constitution and imposes a tax on certain net revenues under its jurisdiction.

This office has consulted with the Department of the Interior regarding Tribe. The Department of the Interior has stated that Tribe possesses the power of taxation and police powers, as well as other governmental powers.

LAW

The Indian Tribal Governmental Tax Status Act of 1982 (Title II of [Pub.L. No. 97-473, 1983-1 C.B. 510, 511](#), as amended by [Pub.L. No. 98-21, 1983-2 C.B. 309, 315](#)) added provisions to the Internal Revenue Code that pertain to the tax status of Indian tribal governments. For two years beginning in 1983, Indian tribal governments were to be treated as states for some federal tax purposes.

Section 1065 of the Tax Reform Act of 1984, 1984-3 (Vol. 1) C.B. 556, made permanent the rules treating Indian tribal governments (or subdivisions thereof) as states (or political subdivisions thereof) for specified federal tax purposes. See [Rev. Proc. 86-17, 1986-1 C.B. 550](#).

[Section 7701\(a\)\(40\)\(A\)](#) of the Code defines the term "Indian tribal government" as the governing body of any tribe, band, community, village, or group of Indians, or (if applicable) Alaska Natives, which is determined by the Secretary, after consultation with the Secretary of the Interior, to exercise governmental functions.

[Section 7871\(a\)](#) of the Code treats an Indian tribal government as a state for certain specified tax purposes. In the legislative history to [section 7871\(a\)](#), Congress indicated that this provision of the Code will not apply to any Indian tribal government unless it is recognized by the Treasury Department, after consultation with the Interior Department, as exercising sovereign powers. The legislative history provides that sovereign powers include the power to tax, the power of eminent domain, and police powers (such as control over zoning, police protection, and fire protection). H.R.Conf.Rep. No. 984, 97th Cong., 2d Sess. 15 ([1982](#)), [1983-1 C.B. 522](#).

Indian tribes possess inherent sovereignty except where it has been limited by treaty or statute, or by implication as a necessary result of their dependent status. Indian tribes are viewed as having certain inherent powers, including the power to tax and administer justice, whether they choose to take actions to exercise them or not. A written constitution or other governing document is not a prerequisite for the exercise of inherent sovereign powers. See [United States v. Mazurie, 419 U.S. 544 \(1975\)](#); [Merrion v. Jicarilla Apache Tribe, 455 U.S. 130 \(1982\)](#); [United States v. Wheeler, 435 U.S. 313 \(1978\)](#); [Kerr-McGee Corp. v. Navajo Tribe of Indians, 471 U.S. 195 \(1985\)](#); [Washington v. Confederated Tribes of Colville Indian Reservation, 447 U.S. 134 \(1980\)](#), [Iron Crow v. Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota, 231 F.2d 89 \(8th Cir.1956\)](#); and [Powers of Indian Tribes, 55 I.D. 14 \(1934\)](#), 1 Op. Sol. on Indian Affairs, 445 (U.S.D.I.1979).

## ANALYSIS

The Department of the Interior publishes a list of recognized Indian tribes. Tribal entities on this list have a government-to-government relationship with the United States and are eligible for programs administered by the Bureau of Indian Affairs. Tribe is on the list. Indian tribes possess inherent sovereignty except where it has been limited by treaty or federal statute, or by implication as a necessary result of their dependent status. Absent such limitation, tribes on the list retain the right to exercise a wide variety of powers, including the power to tax, the power of eminent domain, police powers, and jurisdiction over tribal lands.

After consultation with the Department of the Interior, we are not aware of any treaty or federal statute that divests Tribe of its sovereign power to tax or its police power. Thus, Tribe possesses the right to exercise the power to tax and police powers. Based on the representations submitted by Tribe, Tribe has undertaken to exercise the power to tax and police powers in order to promote the well being of its members.

## CONCLUSION

Tribe exercises governmental functions and thus qualifies as an Indian tribal government within the meaning of [sections 7701\(a\)\(40\)](#) and [7871\(a\)](#) of the Code. Except as specifically provided otherwise, no opinion is expressed on the federal tax

consequences of any particular transaction. Specifically, this ruling does not conclusively establish that Tribe qualifies for a particular federal income or excise tax benefit. This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) of the Code provides that this ruling may not be used or cited as precedent.

Sincerely yours,

Acting Assistant Chief Counsel  
(Financial Institutions & Products)

By

Alvin J. Kraft  
Assistant to the Chief, Branch 1

Enclosure:  
Copy of this letter  
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This document may not be used or cited as precedent. [Section 6110\(j\)\(3\) of the Internal Revenue Code](#).

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